

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) BENCH, PUNE  
APPEAL NO.26/2015(WZ)**

**CORAM:**

**Hon'ble Shri Justice V.R. Kingaonkar,  
(Judicial Member)**

**Hon'ble Dr. Ajay A. Deshpande  
(Expert Member)**

**B E T W E E N:**

**ENDURANCE TECHNOLOGIES PVT.LTD.**

Plot No.K-228/229, MIDC Industrial area,  
Waluj, Distt : Aurangabad-431 133

**.....Applicant**

**A N D**

**Maharashtra Pollution Control Board,**

**Through : The Regional Officer,**

“Paryavaran Bhavan”,

Plot No.A-4A, MIDC, CHIKALTHANA,

Near Dhoot Hospital, Jalna Road,

Aurangabad 431 210

**.....Respondent**

**Counsel for Applicant**

Mr. Joy Basu, Sr. Adv.

Mr. Prateek Kumar,

Mr. Sandeepak Kumar, Adv.

Anushka Sharda, Adv.

**Counsel for Respondents-MPCB :**

Mr. R.B. Raghuvanshi, Adv. a/w.

Rutuja Ambekar

**P.C.**

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**Date: November 23<sup>rd</sup>, 2015**  
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**JUDGMENT**

**1.** We have heard learned Sr. Counsel Mr. Joy Basu appearing for the Appellant and Mr. Suryavanshi, for the Respondent-MPCB. The Appeal arises out of closure order issued against the Appellant by the Respondent on 22<sup>nd</sup> July 2015.

**2.** The Appellant submits that there was no fair opportunity of hearing granted to him prior to passing of the impugned order. It is the contention of the Appellant that the relevant documents, including the report of MPCB, indicating the adverse results shown in the sampling of water as well as the other products and alleged non use of CETP could not properly replied due to absence thereof.

**3.** Perusal of the record shows that doctrine of principle of natural justice is not complied with, in as much as, the basic principle, namely "*audi alteram partem* " is not applied in the instant case. Therefore, the impugned order becomes unsustainable and will have to be in any case, required to be re-visited by the authority. We do not wish to say that the authority can abandon any proposed action,

if there is sufficient material available, but in case, there is sufficient material available with MPCB, due procedure may be followed and appropriate action may be taken by giving a fresh notice and by following the principles of natural justice before passing any order against the Appellant, whether in his favour or adverse, or the case may be.

**4.** The Appellant has deposited amount of Rs.10 crores (Rs. Ten crores) in the escrow account of office of the Collector Aurangabad, for re-medial purpose, in case it is so required, after considering the main matter for re-medial action plan (Application No.11(THC)/2013 “Wockhardt Ltd. Vrs. MPCB”).

**5.** This is not an occasion to take up any other issue and discuss the same but we are compelled to say something due to certain reasons which have prompted us to show as to how absence of probity in the Governance give leverage to mis-management and sometimes may tamper the system. We talk of eradication of corruption. We listen to many lectures and elaborate, erudite speeches on such subjects of rectifications required in the Governance. This particular case, however, illustrates as to how the system is given different treatment, due to potentiality of inaction, may be even mismanagement which sometimes gives stinky smell of oblique intentions, notwithstanding the fact that some of the officers are very good and are free from any

charge of said tainted activities. We cannot just overlook version of Shri R.B. Mahabal, Advocate in Appeal No.28/2015 (M/s. Atra Pharmaceutical Ltd. V/s. MPCB) who made a candid statement that there are large number of industries in Waluj area, Aurangabad who are indulging in mal-practices including his client, yet, they are not booked and no action is taken against them and isolated action is taken against his client M/s. Atra Pharmaceutical Ltd. It may be out of frustration, as he wants to tell us that his industry is being isolated while taking some stringent actions by the MPCB. At the same time, we noted in the order passed on August 24<sup>th</sup>, 2015 itself that credentials of Advocate Shri Mahabal normally cannot be discarded; he being officer of the Court and for the reasons that he is not only an Advocate but also a Consultant of Environment Sciences and Engineering subject. Thus, he acts in the same field for long many years and has experience as to how the system works.

**6.** We are conscious of the fact that in the Maharashtra Pollution Control Board, there is lack of required staff members, not only with the required number of staff members, but there is deficiency of the required well trained and well knowledgeable staff members, i.e. those who are unapproachable staff member and work without no price-tag. Unless in any system of environmental governance,

there are good number of higher officers without price-tag and with unbiased approach based on updated scientific and technical inputs, duly bended with efficiency, the system cannot properly work.

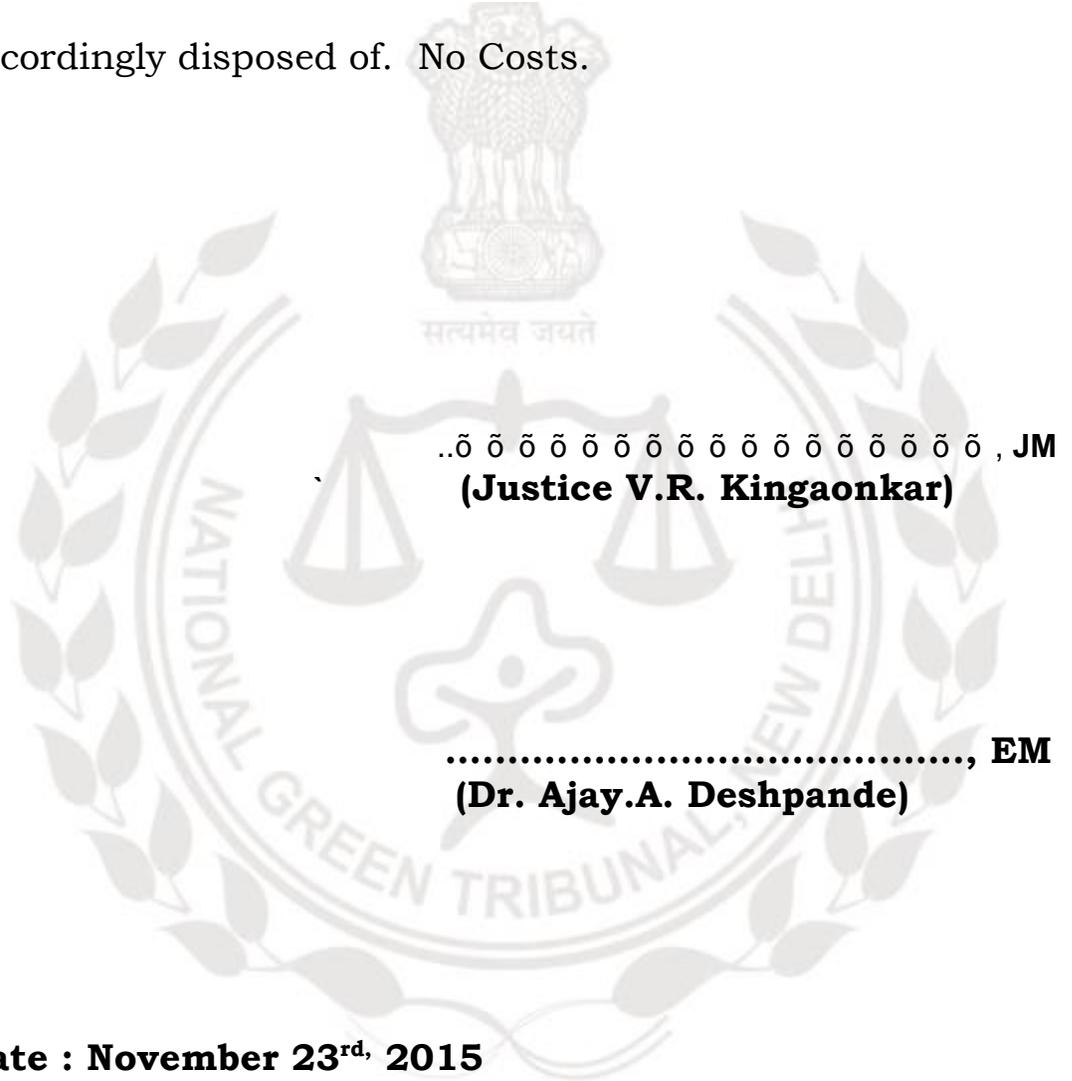
**7.** We have observed in the present case, that for so many years till 2010 or 2013, the samples were collected privately by the industries and the reports were obtained by the industries which were provided to the MPCB and were accepted as if, they are reports of the MPCB. Needless to say the work of MPCB was practically high-jacked by the industries situated in Waluj for many years. Resultantly, only after the report of MS University, the Water Pollution and contamination of ground water is now brought on surface after long many years, and only now being it is being collected by MPCB for the purpose of getting its ground water analysis reports. There are other many things to be said but we have only commented on facts which are matter of record. Though, this is not part of the Appeal, yet we wanted to place it on record only to ensure that such kind of things should not happen in future. Registrar of Tribunal shall send a copy of this order by sending a DO letter to Additional Chief Secretary (Environment) for suitable action.

**8.** Learned Sr. counsel for the Appellant would submit that the report of IIT, Powai is likely to be placed on record

within by 31.1.2015 which will assist the authorities to assess the pollution control systems at the industry.

**9.** The Appeal is, thus, partly allowed. The impugned order is set aside.

**10.** The M.A.No. 189/2015 with Appeal No. 26 of 2015 is accordingly disposed of. No Costs.



....., JM  
(Justice V.R. Kingaonkar)

....., EM  
(Dr. Ajay.A. Deshpande)

**Date : November 23<sup>rd</sup>, 2015**

**ajp.**